

Exhibit “L”

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND
COMPOUNDING PHARMACY,
INC. PRODUCTS LIABILITY MDL No. 2419
LITIGATION

Master Dkt:
1:13-md-02419-RWZ

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THIS DOCUMENT RELATES  
TO:

All Actions

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VIDEOTAPED DEPOSITION OF
JOHN W. CULCLASURE, M.D.

9:05 a.m.
March 23, 2015

Suite 1100
315 Deaderick Street
Nashville, Tennessee

Blanche J. Dugas, RPR, CCR No. B-2290

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20 Also Present:

21 Daniel Makowski, Videographer

22 Melissa Howard, paralegal

1 you've made a mistake, will you agree to try to fix it
2 during the deposition?

3 A. Yes.

4 Q. We're going to take breaks. I'm going to
5 shoot for about every 50 minutes. If you need one
6 before that, you're welcome to take it. Okay?

7 A. Yes.

8 Q. How many patients of St. Thomas Outpatient
9 neurological --

10 MR. GIDEON: Neurosurgical.

11 Q. (By Mr. Kinnard) -- Neurosurgical Center
12 died from meningitis?

13 A. 13, I believe.

14 Q. How many were injured?

15 A. I think 113 got sick.

16 Q. Do you agree that this was a catastrophe?

17 A. Yes.

18 Q. You understand the importance of your
19 testimony today, don't you?

20 A. Yes.

21 Q. Were you the medical director of this
22 center?

23 A. Yes.

24 Q. Were you overall in charge of it?

25 A. I'm -- I don't understand the question.

1 Q. Of the center. Were you overall in charge
2 of it?

3 A. Well, there's a manager, a nurse manager,
4 and so she was in charge of the day-to-day operations,
5 and I was -- I'm the medical director.

6 Q. Did she answer to you as the medical
7 director?

8 A. For clinical issues, not for -- not for
9 personnel matters or other things along those lines.

10 Q. Okay.

11 A. We would collaborate, I guess, if there was
12 an issue like that.

13 Q. Let's go over your background, Doctor.
14 Where were you born?

15 A. Orangeburg, South Carolina.

16 Q. When?

17 A. 1957, January 23rd.

18 Q. And where were you raised?

19 A. About ten miles away in a smaller town.
20 St. Matthews.

21 Q. Where did you go to high school?

22 A. In Orangeburg. Wade Hampton Academy.

23 Q. What year did you graduate from high
24 school?

25 A. 1975.

1 A. Yes, sir.

2 Q. Did Howell Allen pay you for the ESIs done
3 at this center?

4 A. Howell Allen collected the money from the
5 insurance companies and the patients for the work that
6 I did, they retained 40 percent of that to cover my
7 overhead and expenses, and then paid me the remaining
8 60 percent.

9 Q. But they would collect money -- Howell
10 Allen would collect money for ESIs done at this
11 center; correct?

12 A. For the ones that I did, yes.

13 Q. All right. Did this center pay you some
14 money as medical director?

15 A. No.

16 Q. Did the center pay you anything for
17 anything?

18 A. No, sir.

19 Q. So the way you got your money for your work
20 over there was through Howell Allen; true?

21 A. Yes.

22 Q. You didn't charge the patients personally?

23 A. No. They got a bill from Howell Allen
24 Clinic.

25 (Exhibit 122 was marked for

1 as you could have gotten MPA like you were getting it
2 from Pfizer, you would have kept using it?

3 A. Yes.

4 MR. GIDEON: Objection.

5 Q. (By Mr. Kinnard) I want to be certain
6 about some things in respect to what you did about
7 this switch to NECC. Is it true you never called a
8 pharmacist about this potential switch?

9 A. Yes, that's true.

10 Q. Is it true you never consulted with any
11 doctors in your group?

12 A. Yes, that's true.

13 Q. Is it true, other than some brochures that
14 Ms. Schamberg showed you from NECC, that that's the
15 only documents you ever saw about this proposed
16 switch?

17 A. Yes, that's true.

18 Q. You never went to a computer and Googled
19 NECC, did you?

20 A. I never Googled the name of any
21 manufacturer or supplier that we got supplies from.

22 Q. The question is did you ever go to a
23 computer and Google anything about NECC?

24 A. No, sir.

25 Q. Other than these three ladies you told us

1 about, did you ever talk to anybody about NECC before
2 the catastrophe?

3 A. No, sir.

4 Q. How much trouble would it have been,
5 Doctor, to consult with a qualified pharmacist about
6 the question of whether what NECC does is safe?

7 A. I don't know.

8 Q. Is there anything in writing about the
9 decision that was made to switch to NECC?

10 A. If there is something in writing, it would
11 be from Debra, since she was doing the ordering or
12 initiating the contact. I would not have made any
13 notes that I'm aware of.

14 Q. If it there were any questions about the
15 quality of steroids at NECC, did you expect Ms.
16 Schamberg to find that out?

17 A. No, I expected the FDA and the Tennessee
18 department of pharmacy and the Massachusetts Board of
19 Pharmacy to be on top of that.

20 Q. Did you know, when Ms. Schamberg talked to
21 you, that NECC was a compounding pharmacy?

22 A. Yes, sir.

23 Q. What did you know a compounding pharmacy
24 was?

25 A. Compounding pharmacies take raw material

1 Q. Have you seen any of the notes, any
2 handwritten notes or anything like that?

3 A. I saw them while they were -- I mean, I saw
4 them at that time. I've not seen them in any of the
5 materials I've reviewed for the deposition.

6 Q. Do you know if they were kept or destroyed?

7 A. I don't know. I would be surprised if
8 Debra -- anything would be destroyed. She's pretty
9 careful about documents.

10 (Exhibit 136 was marked for
11 identification.)

12 Q. (By Mr. Kinnard) I'm going to mark as
13 Exhibit 136 STOPNC_1597, which is a two-page document.
14 It also includes 1594. It's dated October 3rd, 2012.
15 You familiar with this letter?

16 A. Yes, I believe so. I think I saw it.

17 Q. Is this a competitor of STOPNC?

18 A. He has another pain practice in town. I --
19 I don't usually think of it as a competitor. We're
20 closed. I mean, I'm not -- he's not -- so I don't
21 compete with him for patients. I mean, we're a closed
22 center. We don't take outside referrals.

23 Q. Okay. There's a sentence in the first
24 paragraph where he says, "The medications utilized by
25 the physicians at Center for Spine, Joint and

1 A. That's primarily it. I mean, if they -- if
2 the patient got scheduled and they're with a
3 particular -- and their diagnoses didn't establish
4 medical necessity with their insurance company, then
5 we can do the procedure and not be reimbursed. I
6 mean, if that's -- I generally ask the billing not to
7 balance bill patients if there are errors that
8 occurred because of something that we missed. If I'm
9 aware of it, I don't want the patients billed.

10 Q. Do you remember any ESI patients not being
11 reimbursed for medical necessity reasons?

12 A. Not specifically. I don't get a report
13 from the business office about how many are not being
14 reimbursed because of a problem. That's just not the
15 data that I get.

16 Q. So if there were medical necessity issues
17 that came up, you wouldn't have known about them?

18 A. Probably. I've asked the billing office if
19 there is a problem, you know, to let me know if they
20 need, you know, help with diagnosis codes or anything
21 like that or that I can help with, but I don't know of
22 any -- they don't -- I haven't gotten a call about any
23 specific patients that didn't -- you know, insurance
24 denied payment for.

25 Q. What entity handles the billing for STOPNC?

1 A. It's internal to the practice -- or Howell
2 Allen. Excuse me. The Howell Allen billing office, I
3 believe, handles them.

4 Q. A patient who's considering getting an
5 epidural steroid injection presumably like most
6 procedures has other options; correct?

7 A. Yes.

8 Q. What are the other options that a patient
9 has in lieu of getting an ESI?

10 A. Time, analgesics, physical therapy. Those
11 would be the main ones.

12 Q. Who do you mean by time?

13 A. Just waiting, see if it gets better.

14 Q. You described the sort of initial consult
15 you -- that you do with the new patients earlier
16 today. And I believe you said, you know, you walk
17 into the room and the patient's got the blue wristband
18 and they're in street clothes and you go over things
19 with them for a few minutes, and then you might leave
20 that room to go and do a procedure, for example.

21 When you walk into the room the first time
22 to meet the new patient, what do you know about that
23 patient as you walk into their room?

24 A. Well, I've already picked up the chart and
25 I look at the chart. So I see some basic demographic

1 relaxed.

2 Q. Did you feel the same way after your
3 preparation?

4 A. Yes.

5 Q. And did you talk to Debra Schamberg about
6 your deposition --

7 A. No.

8 Q. -- in the couple of weeks before it?

9 A. No, other than just, you know, that it was
10 coming up because she's aware of the scheduling, I had
11 to be out today.

12 Q. Did you read the transcript of her
13 deposition?

14 A. No.

15 Q. Do you know who the Saint Thomas Hospital
16 pharmacist is or was?

17 A. No.

18 Q. Does the name Martin Kelvas mean anything
19 to you?

20 A. That does -- Marty, I think. That does
21 sound familiar, Marty Kelvas, I believe.

22 Q. Do you know who he is?

23 A. I wouldn't know him if he walked in here.

24 Q. Do you -- do you have a memory of how the
25 name come up or how you became familiar with the name?

DISCLOSURE

Pursuant to Article 10.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia which states: "Each court reporter shall tender a disclosure form at the time of the taking of the deposition stating the arrangements made for the reporting services of the certified court reporter, by the certified court reporter, the court reporter's employer or the referral source for the deposition, with any party to the litigation, counsel to the parties, or other entity. Such form shall be attached to the deposition transcript," I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as a representative of Discovery Litigation Services, LLC. Discovery Litigation Services, LLC was contacted to provide court reporting services for the deposition. Discovery Litigation Services, LLC will not be taking this deposition under any contract that is prohibited by O.C.G.A. 9-11-28(c).

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Blanche J. Dugas
CCR No. B-2290

1 STATE OF GEORGIA:

2 COUNTY OF FULTON:

3
4 I hereby certify that the foregoing
5 transcript was reported, as stated in the
6 caption, and the questions and answers
7 thereto were reduced to typewriting under
8 my direction; that the foregoing pages
9 represent a true, complete, and correct
10 transcript of the evidence given upon said
11 hearing, and I further certify that I am
12 not of kin or counsel to the parties in the
13 case; am not in the employ of counsel for
14 any of said parties; nor am I in any way
15 interested in the result of said case.

16
17 March 31, 2015

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19
20
21 BLANCHE J. DUGAS, CCR-B-2290
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23
24
25

CAPTION

The Deposition of JOHN W. CULCLASURE, M.D.,
taken in the matter, on the date, and at the time and
place set out on the title page hereof.

It was requested that the deposition be
taken by the reporter and that same be reduced to
typewritten form.

It was agreed by and between counsel and
the parties that the Deponent will read and sign the
transcript of said deposition.